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February 9, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, D.C. 20554

RE: MM Docket No. 92-264

Implementation of Section 11 and 13 of  
the Cable Television Consumer  
Protection and Competition Act of 1992

Horizontal and Vertical Ownership  
Limits, Cross-Ownership Limitations  
and Anti-Trafficking Provisions

Dear Ms. Searcy:

Filed herewith, on behalf of Cablevision of Texas III, L.P., is an original and 10 copies of its Comments in the above referenced matter. We have enclosed sufficient copies so that each Commissioner can be served with a copy.

Should you have any questions regarding this filing, please contact the undersigned.

Sincerely,



Mark J. Palchick  
Attorney for  
Cablevision of Texas III, L.P.

MJP/mcl  
Enclosures  
cc: Lauren J. Belvin (via hand delivery)  
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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

## COMMENTS OF CABLEVISION OF TEXAS III, L.P.

Cablevision of Texas III, L.P. ("Cablevision") through undersigned counsel submits these comments to the above-referenced Notice of Proposed Rulemaking and Notice of Inquiry, FCC 92-542.

Cablevision provides cable television service to smaller communities throughout Oklahoma, Arkansas, Kansas, Arizona, Missouri and Nevada. In some of its communities Cablevision is currently competing directly with wireless cable operators. Cablevision is limiting its comments to the Commission's enforcement of the self executing revisions to § 613(a) which prohibit the common ownership of a cable television system and a MMDS facility or SMATV system within the cable operator's franchise area.

Section 613(a)(2) of the Cable Act as revised by Public Law 102-385 provides in pertinent part:

"It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in

any portion of the franchise area served by that cable operator's cable system. The Commission -

(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

(B) may waive the requirements of this paragraph to the extent that Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming."

Accordingly, Section 11 of the 1992 Cable Act has added a prohibition against common ownership of a cable system and either a MMDS or a SMATV service in the cable operator's franchise area. Although it is perhaps overstating the obvious, the Commission must make it clear that the common ownership is what is prohibited and not just ownership by a cable system. The corporate structure of which entity owns the other can make no difference in the effect of the prohibition.<sup>1</sup>

The Commission at paragraph 26 of the Ownership Notice tentatively concluded that its "recently adopted rules are consistent with and effectively implement the cross-ownership prohibitions of the 1992 Cable Act as regards the MMDS service." This tentative conclusion is fundamentally at odds with the plain language of the statute.

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<sup>1</sup>Accord Notice of Proposed Rulemaking and Notice of Inquiry in Docket 92-264, released December 28, 1992, ("Ownership Notice" at Paragraph 24.)

As described above 613(a)(2) absolutely prohibits common ownership of a co-located MMDS facility and cable system except in two very limited circumstances. The only exceptions to this blanket and very clear prohibition are where the common ownership existed on October 5, 1992<sup>2</sup> or if a waiver is necessary to ensure significant portions of a franchise are able to obtain video programming.<sup>3</sup> The Commission's rules as adopted in its Second Report and Order in General Docket No. 90-54, 6 FCC Rcd. 6792 (1991) and Order on Reconsideration in General Docket Nos. 90-54 and 80-113, 6 FCC Rcd. 6764 (1991), however, are far less restrictive than the language of 613(a)(2). Therefore, those provisions of the Commission's rules which are inconsistent with the 1992 Cable Act must be revised.

When the Commission adopted its restrictions on cable television/MMDS joint operation in its Report and Order in Docket 90-54, FCC Rcd. 6410, it included two exceptions to the prohibition.<sup>4</sup> The Commission permitted co-ownership of an MMDS facility and a cable system if there was another independently owned and operated cable system operating in a substantial portion of the protected service area of the MMDS system. Also, at paragraph 43, the Commission permitted co-location of an MMDS

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<sup>2</sup>§ 613(a)(2)(A).

<sup>3</sup>§ 613(a)(2)(B).

<sup>4</sup>At paragraph 42, footnote 5, FCC Rcd. 6417.

system and a cable system in rural areas provided there was no MMDS facility currently existing for that area. Section 11 of the 1992 Cable Act was adopted well after the adoption of the Commission's MMDS cable cross-ownership rules. The additional restrictions imposed under Section 11 were adopted to further diversity and prevent the warehousing of frequencies.<sup>5</sup> Clearly, if Congress' intent was to include the exemptions contained in the FCC's current MMDS cable cross-ownership restriction, it should have spelled out those exemptions in the statute. However, the plain language of the statute is absolute and only permits two exemptions, neither of which are contained in the Commission's current rules. Accordingly, the Commission needs to revise its rules to only permit a waiver of the cross-ownership prohibition for cross-ownership existing on October 5, 1992, and in those instances where the Commission has found, pursuant to Section 76.7, that a waiver is necessary to insure the availability of video programming. Neither of the Commission's current exceptions meet that test.

Further, the Commission needs to make it explicit that the exemption contained in Section 613(a)(2)(A) for "all existing multi-channel, multi-point services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph" only applies to those situations where both the cable system and the MMDS facility were in existence

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<sup>5</sup>Senate Report at 47.

and operating on October 5, 1992. In the Second Report and Order, in Docket No. 90-546, FCC Rcd. 6792 (1991) at Paragraph 39, the Commission grandfathered both existing combinations and also those combinations where a cable operator had an application for an MMDS facility pending which was filed prior to February 8, 1990. At paragraph 39 of the Second Report and Order, the Commission makes a clear distinction between existing cable/wireless combinations and its decision to also grandfather existing applications. Congress in adopting the exemption at Section 613(a)(2)(A), did not make this distinction. Accordingly, the FCC is precluded from grandfathering any combinations that were not actually existing and operating on or before the October 5, 1992, date. That is to say, both the MMDS system and the cable system should have been providing service to customers, with the MMDS system providing at least four channels of MMDS service.

Cablevision agrees with the Commission's initial determination for handling complaints pursuant to the provisions of Section 76.7 of the Commission's rules. Moreover, to facilitate its evaluation of these complaints, Cablevision also agrees with the Commission's initial determination which would require cable operators to provide information regarding ownership of MMDS or SMATV systems in filings such as the annual FCC Form 325 or CARS license applications. Moreover, since MMDS and SMATV operators are also prohibited from owning cable systems, MMDS operators should also be required to notify the Commission of their ownership of cable

systems on all filings that they file with the Commission, and SMATV operators that seek permission to use microwave interconnections, should also advise the Commission of their ownership or co-ownership with cable television systems.

Accordingly, Cablevision of Texas III, L.P., respectfully requests that the Commission revise its current MMDS cross-ownership rules so as to prohibit all co-ownership of MMDS and cable television facilities in the same franchise area unless that combination was in existence and fully operational on or before October 5, 1992. Further, Cablevision of Texas III, L.P., respectfully requests that cable operators, MMDS operators and applicants, and SMATV operators be required to advise the Commission of their ownership of competing media on an annual basis.

Respectfully submitted,

CABLEVISION OF TEXAS III, L.P.

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